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Federal Communications Commission

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Before the  
Federal Communications Commission

Washington D.C. 20554

DISPATCHED BY

In the Matter of )  
 ) CC Docket No. 97-181  
 Defining Primary Lines )

**Report and Order & Further Notice of Proposed Rulemaking**

Adopted: February 22, 1999

Released: March 10, 1999

Comment Date: April 9, 1999

Reply Date: April 26, 1999

By the Commission: Commissioner Furchtgott-Roth Dissenting in Part and Issuing a Statement

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## I. Introduction

1. The Commission's access charge rules set higher caps for the subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) that price cap local exchange carriers (LECs) may assess on non-primary residential lines and multi-line business lines than on primary residential lines and single line business lines.<sup>1</sup> To promote uniformity in the way price cap LECs assess SLCs and PICCs, we adopt requirements in this Report and Order for differentiating and identifying such lines.

2. We adopt a location-based definition of primary residential line. Under this definition, one residential line that a price cap LEC provides to a particular location will be considered primary. Any other residential lines the price cap LEC provides to the same location shall be deemed non-primary residential lines. For this purpose, a price cap LEC provides a line whether it sells the line to a subscriber or to a competitive LEC that resells the line. We also address how to determine whether businesses are single line or multi-line.

3. The Commission's rules that establish PICCs and set different SLC caps for primary residential lines than for non-primary residential lines apply only to price cap LECs, not to rate-of-return LECs.<sup>2</sup> Consequently, the definition of primary residential line we promulgate in this order shall apply only to price cap LECs. The Commission has sought comment on whether to apply to rate-of-return LECs the rules regarding PICCs and the higher caps for non-primary residential lines, but has not issued an order resolving that issue.<sup>3</sup> Should the Commission decide at a later date to apply such rules to rate-of-return LECs, the Commission will address at that time how to define, identify, and verify primary residential lines and single line business lines for rate-of-return LECs. Thus we do not address issues that the Notice of Proposed Rulemaking raised regarding rate-of-return LECs.<sup>4</sup>

4. We also issue a Further Notice of Proposed Rulemaking in which we tentatively conclude that individuals with speech or hearing disabilities should have access at primary-line rates to one residential line per location for use with a TTY, regardless of whether another line at the location is also treated as primary for residents without such disabilities. We seek comment on this tentative conclusion, and several proposals for implementing it.

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<sup>1</sup> See 47 C.F.R. § 69.152(b), (d), (e), (k) (providing means for price cap LECs to calculate the SLC caps for primary and non-primary residential lines, and single line and multi-line business lines); 47 C.F.R. § 69.153(c)-(e) (providing means for price cap LECs to calculate the PICC caps for primary and non-primary residential lines, and single line and multi-line business lines).

<sup>2</sup> See *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 15998 n.37, 16015 (1997) (*Access Charge Reform Order*), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

<sup>3</sup> See *Access Charge Reform for Incumbent LECs Subject to Rate-of-Return Regulation*, Notice of Proposed Rulemaking, 13 FCC Rcd 14238, 14251-53 (1998).

<sup>4</sup> See *Defining Primary Lines*, Notice of Proposed Rulemaking, 12 FCC Rcd 13647, 13650 (1997) (Notice).

## II. Report and Order

### A. Background

5. To provide interstate telecommunications services, interexchange carriers (IXCs) usually rely on some of the telephone infrastructure that incumbent LECs use to provide local telephone service. The incumbent LEC's local loop, for example, connects a customer to the LEC network so that the customer can make and receive intrastate calls. The incumbent LEC's local loop also connects the customer to the networks of IXCs so that the customer can make and receive interstate calls. Consequently, a portion of the costs an incumbent LEC incurs in providing this common infrastructure is allocated to intrastate service and recovered pursuant to state regulation, and a portion is allocated to interstate service and recovered pursuant to regulations of the Federal Communications Commission.<sup>5</sup>

6. The Commission adopted uniform access charge rules in 1983 to govern the way incumbent LECs recover that portion of the costs of the common infrastructure allocated to interstate service.<sup>6</sup> Under these rules, the Commission allows incumbent LECs to recover some of the interstate costs of providing the local loop through a flat, monthly end-user common line charge (EUCL)—sometimes called a SLC—that they assess on end users.<sup>7</sup> The Commission limited the amount of the SLC, however, because of concerns that an excessively high SLC might cause end users to disconnect their telephone service.<sup>8</sup> The Commission allowed the incumbent LECs to recover the remainder of their interstate costs attributable to the local loop through a per-minute carrier common line charge (CCLC) that they assess on IXCs.<sup>9</sup>

7. Under principles of cost-causation, it is most economically efficient for incumbent LECs to recover the costs of providing interstate access in the same way that they incur them. Under such principles, incumbent LECs should recover their traffic-sensitive costs of interstate access through per-minute charges, and should recover their non-traffic-sensitive costs through flat charges. The incumbent LECs' costs of providing the local loop do not change with the number, length, or type of telephone calls customers make, and so are non-traffic sensitive. Because of the cap on SLCs, however, incumbent LECs recover some of these non-traffic-sensitive loop costs through the traffic sensitive CCLC. In its May 1997 *Access Charge Reform Order*, the Commission decided to phase out

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<sup>5</sup> See, generally, 47 U.S.C. §§ 151-52 (giving the FCC authority over interstate communications).

<sup>6</sup> See *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241 (1983 Access Charge Order), *recon.*, 97 FCC 2d 682 (1983), *second recon.*, 97 FCC 2d 834 (1984).

<sup>7</sup> See 1983 Access Charge Order, 93 FCC 2d at 243, 279; *Access Charge Reform Order*, 12 FCC Rcd at 16007-08.

<sup>8</sup> See 1983 Access Charge Order, 93 FCC 2d at 243, 290; *Access Charge Reform Order*, 12 FCC Rcd at 16007.

<sup>9</sup> See 1983 Access Charge Order, 93 FCC 2d at 244, 280; *Access Charge Reform Order*, 12 FCC Rcd at 16007-08.

the CCLC for price cap LECs on the grounds that recovering the non-traffic-sensitive loop costs through traffic-sensitive charges is economically inefficient.<sup>10</sup>

8. To provide price cap LECs with a means to recover some of the loop costs they previously recovered in the CCLC, the Commission raised the price cap LECs' SLC caps for non-primary residential lines and multi-line business lines, but chose not to raise the price cap LECs' SLC caps for primary residential lines and single line business lines.<sup>11</sup> For 1999, the SLC cap for price cap LECs is \$3.50 per month for each primary residential and single line business line, \$6.07 per month for each non-primary residential line, and \$9.20 per month for each multi-line business line.<sup>12</sup> To address concerns that charging a higher SLC for non-primary residential lines sold by price cap LECs might encourage subscribers to obtain their additional residential lines from resellers, the Commission decided in the *Access Charge Reform Order* to allow price cap LECs to charge the higher SLC to carriers that resell price-cap LECs' lines if the lines are non-primary.<sup>13</sup>

9. Because the SLC caps on residential and single line business lines would prevent most price cap LECs from recovering through the SLC all the costs they formerly recovered through the CCLC, the Commission also created the PICC: a flat, per-line charge that price cap LECs may assess on an end user's presubscribed IXC.<sup>14</sup> As with the SLC, the Commission set higher PICC caps for non-primary residential lines and multi-line business lines than for primary residential lines and single line business lines.<sup>15</sup> Through June 30, 1999, the PICC cap is \$0.53 per month for each primary residential and single line business line, \$1.50 per month for each non-primary residential line, and \$2.75 per month for each multi-line business line.<sup>16</sup> As a result of the various caps, the lines of customers that subscribe to single residential or business lines are not assessed the entire cost of the loops. Until the access reform rate structure is fully phased in, these lines are subsidized by customers that subscribe to multiple business lines.

10. The Commission sought comment in a September 1997 notice of proposed rulemaking (Notice) on whether to modify its rules to provide for the definition, identification, and verification of

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<sup>10</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 15998-99, 16004, 16007-08, 16012-14.

<sup>11</sup> See *id.* at 15999-16000, 16004-05, 16008-17.

<sup>12</sup> See 47 C.F.R. § 69.152.

<sup>13</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 16017; 47 C.F.R. § 69.152(e)(3).

<sup>14</sup> *Access Charge Reform Order*, 12 FCC Rcd at 15999-16000, 16004-05.

<sup>15</sup> See *id.* at 16004-05, 16020, 16022. See also 47 C.F.R. § 153(c)-(e).

<sup>16</sup> See 47 C.F.R. § 153(c)-(e); *Access Charge Reform*, CC Docket No. 96-262, Third Order on Reconsideration, FCC 98-257 (rel. Oct. 5, 1998) (extending date for increase of PICC caps from January 1, 1999, to July 1, 1999).

primary residential lines and single line business lines.<sup>17</sup> Choosing appropriately balanced definitions is important because as primary residential and single line business line counts increase, so, too, does the subsidy that multi-line business line customers must bear during the phase-in of the access reform rate structure.

## B. Definition of Primary Residential Line

### 1. Background

11. The Commission's rules currently do not define "primary residential line." The Commission sought comment in the *Notice* on whether to define the primary residential line as the primary line of a residence, of a household,<sup>18</sup> of a subscriber, or on some other basis.<sup>19</sup> Under a residence definition, only one line per service location—such as a house or an apartment—would receive primary line status. Under a household definition, each family unit would receive one primary line, so that if multiple families live in one house, each family would receive one line at rates with the lower caps. Under a subscriber definition, one line would be given primary-line status for each account opened with the carrier.

12. In the meantime, each price cap LEC devised its own definition for the purpose of its 1998 access tariff filings.<sup>20</sup> The Commission concluded in its investigation of those tariff filings that, pending completion of this rulemaking proceeding, defining as a primary line either one line per residence or one line per billing-name account per residence was "not unreasonable" for purposes of the tariff filings.<sup>21</sup> The Commission also found that reasonable definitions of primary and non-primary residential lines should, at a minimum, "categorize a second residential line as non-primary if the line is billed to the same name at the same location."<sup>22</sup>

13. In the *Notice*, the Commission tentatively concluded that price cap LEC records may be inadequate to identify primary residential lines, particularly if the Commission adopted a

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<sup>17</sup> *Notice*, 12 FCC Rcd at 13648. Appendix A lists the fourteen parties that filed comments and the twelve parties that filed replies, as well as the shortened forms by which we will refer to these parties in this order.

<sup>18</sup> The Commission suggested two possible definitions of household: one from the Census Bureau based on the identification of "separate living quarters," and one from the IRS based on the identification of the "principal place of abode" of a taxpayer and certain of the taxpayer's family members or other dependents. See *id.* at 13651-52 & nn. 26-27.

<sup>19</sup> *Id.* at 13561.

<sup>20</sup> See *Implementing Access Charge Reform*, Memorandum Opinion and Order, 13 FCC Rcd 14683, 14699-700 (1998) (*1998 Access Tariff Order*).

<sup>21</sup> *Id.* at 14700-01.

<sup>22</sup> *Id.* at 14701-02.

household-based definition.<sup>23</sup> Based on the presumption that identifying primary residential lines without information from the customer would be more administratively burdensome, the Commission tentatively concluded to permit price cap LECs to use end-user self-certification to identify primary lines.<sup>24</sup>

## 2. Discussion

14. Some commenters have supported each of the definitions of primary residential line that the Commission identified in the *Notice*: household-based,<sup>25</sup> account-based,<sup>26</sup> and location-based.<sup>27</sup> None of these definitions is flawless. An account-based definition, for example, would permit a subscriber to have multiple primary lines by ordering each line under a different account name. A location-based definition does not permit subscribers who share the same address, such as housemates, each to have his or her own primary line. A household-based definition would present carriers, consumers, and the Commission with the ambiguous and administratively burdensome task of determining which subscribers are part of which households. We have balanced the advantages and disadvantages of each option. We conclude that a location-based definition is the least intrusive and most administratively feasible definition that fulfills the *Access Charge Reform Order*'s objectives for setting higher SLC and PICC caps for non-primary residential lines and multi-line business lines.

15. Thus, we will consider one residential line provided by a price cap LEC per service location to be a primary residential line. For example, only one line per house, per apartment, or per college dorm room will receive primary-line rates. We begin by noting along with a number of commenters that LECs can implement this definition based on their service records.<sup>28</sup> As the Commission stated in the *Notice*, a location-based definition is "administratively simple and less invasive of subscribers' privacy because it does not require the gathering of information regarding

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<sup>23</sup> See *Notice*, 12 FCC Rcd at 13652-53 & n.29.

<sup>24</sup> *Id.* at 13653.

<sup>25</sup> See Calif. Public Utils. Comm'n Comments at 2-4 & n.1 (offering Census-like definition of "household").

<sup>26</sup> See AT&T Reply at 1-3, 5 n.6 (preferring, first, that the Commission eliminate the distinction between primary and non-primary lines, second, that the Commission adopt a "first line to the location" approach, and third, that the Commission adopt an account-based approach); Bell Atlantic Comments at 2; BellSouth Comments at i, 6-7; GTE Comments at 12, 14 (deferring to any prior state definition); MCI Comments at 2; RTC Comments at 4; SBC Comments at 3; Sprint Comments at 1-5 (preferring that the Commission eliminate the distinction between primary and non-primary lines); USTA Comments at 5-6; Welch Comments at § II.

<sup>27</sup> See Ameritech Comments at 4, 5, 7 (advocating a "first line at location" approach); AT&T Reply at 1-3 (advocating a "first line at location" approach but preferring that the Commission eliminate the distinction between primary and non-primary line); U S WEST Comments at 3.

<sup>28</sup> See Ameritech Comments at 4, 6, 7, 8; AT&T Reply at 3-4; U S WEST Comments at 3-4, 8.

subscriber living arrangements that would be needed to identify households.”<sup>29</sup> Consequently, this definition obviates the need for the self-certification procedure that the Commission outlined in the *Notice*,<sup>30</sup> a procedure that the Office of Management and Budget (OMB) argues would be ineffective and burdensome.<sup>31</sup> A customer’s service location is also straightforward to determine and not something the customer can easily alter or misreport to obtain the primary-line rate.<sup>32</sup> This definition will require carriers to cross-check records within a service location to ensure that only one subscriber line per residence receives the primary-line rates, but sorting records by service location should be relatively easy.<sup>33</sup> Furthermore, many price cap LECs are already moving toward a location-based definition in their tariffs.<sup>34</sup>

16. A number of commenters oppose this definition because it allows only one primary line per multi-subscriber residence.<sup>35</sup> If, for example, two roommates each subscribe to a line, only one line will be billed at the primary-line rate. The Commission recognized this fact in the *Notice*.<sup>36</sup> Generally, however, only a single residential connection is necessary to permit all residents at a particular service location complete access to telecommunications and information services, including access to emergency services.<sup>37</sup>

17. If a subscriber has both a primary and secondary home, this definition would also treat

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<sup>29</sup> *Notice*, 12 FCC Rcd at 13651. *Accord* Ameritech Comments at 4-7; AT&T Reply at 3-4; U S WEST Comments at 4-5, 8.

<sup>30</sup> *Accord* Ameritech Comments at 4-7; AT&T Reply at 3-4.

<sup>31</sup> E-mail from Timothy R. Fain, Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs, to Shoko Hair, FCC (Dec. 10, 1997) (OMB Comments) (conveying to the Commission OMB’s decision contained in OMB comment file 3060-0792 to disapprove under the Paperwork Reduction Act of 1995 the end-user self-certification proposal).

<sup>32</sup> *Cf.* Ameritech Comments at 5-6; AT&T Reply at 3-4; U S WEST Comments at 5.

<sup>33</sup> *See* Ameritech Comments at 4-6 (stating that a location-based definition can be easily implemented by referring to information already in customer records); AT&T Reply at 3; U S WEST Comments at 8.

<sup>34</sup> *See, e.g.*, Southwestern Bell Telephone Company Amendment to Application No. 459 (Oct. 15, 1998) (stating Southwestern Bell intention to adopt a location-based definition of primary and non-primary line).

<sup>35</sup> *See* GTE Comments at 12; RTC Comments at 6; SBC Comments at 12; Sprint Reply at 3-4.

<sup>36</sup> *Notice*, 12 FCC Rcd at 13651.

<sup>37</sup> *See Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 132 (Federal-State Joint Board 1996) (Joint Board Decision). For one notable exception regarding individuals with hearing or speaking disabilities, see the Further Notice of Proposed Rulemaking, Part III, *infra*.

one line in each home as primary.<sup>38</sup> We note that this definition departs from current practice in the business context, under which a business with one line in each of multiple locations in the same telephone company area receives multi-line business rates on each line.<sup>39</sup> We find it unnecessary to extend this policy to the residential context. As many commenters point out, the burden of investigating whether a particular residential subscriber has lines in multiple residences outweighs any benefit from collecting the higher non-primary line rates,<sup>40</sup> especially as the number of subscribers with multiple residences, and thus the number of lines that would be reclassified from primary to non-primary, is likely only a small percentage of all residential lines. Furthermore, in many instances different incumbent LECs will serve the primary and secondary residences.<sup>41</sup> This further complicates the task of determining which subscribers have multiple residences, and raises the difficult question of which line would be deemed the primary line, assuming the subscriber could have only one primary line throughout all his or her residences. We also note that the number of residential subscribers is larger than the number of business subscribers.

18. We will look at all lines provided by a particular price cap LEC, whether sold by the price cap LEC or a reseller, when determining the status of the lines to a residence.<sup>42</sup> We do so for the same reason the Commission decided in the *Access Charge Reform Order* to allow price cap LECs to charge the higher SLC to carriers that sell non-primary lines by reselling the incumbent LECs' lines: to address concerns that charging higher rates for non-primary residential lines sold by price cap LECs might encourage subscribers to obtain their additional lines from resellers for no reason other than to avoid the higher SLC.<sup>43</sup> Consequently, we do not accept the invitation of some commenters to qualify our definition further by treating as primary one line per location *per service provider*.<sup>44</sup> Doing so would create an artificial incentive for subscribers to spread their lines out among price cap LECs and multiple resellers merely to avoid the higher SLCs and PICCs associated with non-primary residential lines.<sup>45</sup>

19. We do not seek to discourage subscribers from ordering services from multiple

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<sup>38</sup> See Bell Atlantic Comments at 4 (making this observation in the context of its recommended definition of one primary residential line per account per location).

<sup>39</sup> See *MTS and WATS Market Structure Phase I*, CC Docket No. 78-72, Memorandum Opinion and Order, 1985 FCC LEXIS 2456 (Common Carrier Bureau rel. Oct. 10, 1985).

<sup>40</sup> See Bell Atlantic Comments at 4; USTA Comments at 6.

<sup>41</sup> See Bell Atlantic Comments at 4.

<sup>42</sup> Cf. 47 C.F.R. § 69.152(e)(3) (stating that a LEC may collect the non-primary residential SLC from a carrier that resells the LEC's line to a residence that already receives a primary residential line).

<sup>43</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 16017.

<sup>44</sup> See BellSouth Comments at i; MCI Comments at 5 & n.6; SBC Comments at 3-4.

<sup>45</sup> See USTA Comments at 4-5.



providers, but also do not want to create an artificial incentive for them to do so. Thus, when a price cap LEC has already sold a line to a residence, the price cap LEC may assess the higher rates on any additional resold lines. If, however, a resold price cap LEC line is the primary line, as is the case when all the lines to the residence are purchased from one or more resellers, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence. If the price cap LEC line and resold line are sold simultaneously, the price cap LEC line shall be the primary line. When lines are sold to a location by both a price cap LEC and at least one reseller of price cap LEC lines, one of the lines must be identified as primary, but which one will have little impact on the end user: whichever line is deemed primary, the sum of the SLC and PICC charges to the consumer will be the same. Because the price cap LEC is physically providing both lines, we think it reasonable that it get the primary line designation in the rare circumstance that both lines are sold simultaneously.

20. Lines sold by wireless carriers and competitive LECs that do not resell price cap LEC lines shall not be considered in determining residential line status. Such carriers are not rate regulated by the Commission and are not subject to the Commission's rules regarding SLCs and PICCs.<sup>46</sup> Nor do price cap LECs collect SLCs or PICCs on those carriers' lines. This approach is equitable as between price cap LECs, resellers, competitive LECs, and wireless carriers because it does not provide any artificial advantage in marketing second lines. Furthermore, a price cap LEC would have difficulty determining whether its customers are also receiving lines from non-reselling competitive LECs or wireless carriers.

21. We will not adopt a household-based definition of primary residential line. The California Public Utilities Commission was the only party to support such a definition.<sup>47</sup> The California Public Utilities Commission is correct that such a definition would allow multiple primary lines in multi-household residences (*e.g.*, one for each family in a multi-family dwelling).<sup>48</sup> Such a definition would also, however, require gathering invasive information concerning living arrangements through a self-certification mechanism that would be administratively burdensome given the large universe of customers.<sup>49</sup> The ambiguity of a household-based definition may also result in inconsistent application across subscribers, or encourage subscribers simply to declare themselves part of different households to receive the lower primary-line rates.

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<sup>46</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 16153 (finding it unnecessary to apply any of the Commission's Part 69 rules to competitive LECs); *Notice*, 12 FCC Rcd at 13649-50.

<sup>47</sup> Calif. Public Utils. Comm'n Comments at 2-4.

<sup>48</sup> See *id.* at 3.

<sup>49</sup> See *Notice*, 12 FCC Rcd at 13651. Accord OMB Comments; GTE Comments at 10-12; RTC Comments at 7-8. Cf. AT&T Reply at 3 (arguing that a location-based definition would avoid the need to determine whether multiple households live in one residence); Bell Atlantic Comments at 3 (arguing that defining one line per account per location as primary would avoid the need for self-certification); USTA Comments at 7 (arguing that an account-based definition does not require customers to relate information concerning their living arrangements); Welch Comments at § II.

22. Nor will we treat one line per subscriber account as primary.<sup>50</sup> Such a definition would allow multiple subscribers at a single location to receive the lower primary-line rates on each line (e.g., roommates with individual accounts). Some commenters view this as an advantage to the definition.<sup>51</sup> Any such advantage, however, is offset by the ability of a subscriber to game such a definition by obtaining multiple lines under different account names.<sup>52</sup> Some carriers even allow customers to obtain separate accounts under the same name.<sup>53</sup> Furthermore, universal service objectives are met so long as residents at a single location have access to one line at that location at the subsidized primary-line rates; allowing more than one such line per location excessively shifts costs onto other subscribers. We agree with commenters that an account-based definition is unambiguous<sup>54</sup> and compatible with most carriers' existing service records,<sup>55</sup> but so too is a location-based definition. An account-based definition would eliminate the need to check whether multiple subscribers are receiving lines at the same location,<sup>56</sup> but the definition's other shortcomings outweigh this benefit. In any event, as noted above, sorting records by service location should not be difficult.

23. We also do not adopt the suggestion of some commenters that we eliminate the primary/non-primary line distinction, perhaps by applying an averaged rate to all lines or replacing the PICC with a cost-based SLC.<sup>57</sup> The Commission specifically decided in the *Access Charge Reform* and *Universal Service* orders not to raise the SLC caps on primary residential lines, in accordance with the recommendations of the Joint Board.<sup>58</sup> Furthermore, a narrow proceeding such as this is not the appropriate forum for considering a SLC increase.

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<sup>50</sup> See Bell Atlantic Comments at 2; BellSouth Comments at i, 6-7; GTE Comments at 12, 14 (deferring to any prior state definition); MCI Comments at 2; RTC Comments at 4; SBC Comments at 3; Sprint Comments at 4-5; USTA Comments at 5-6; Welch Comments at § II.

<sup>51</sup> See Bell Atlantic Reply at 2; BellSouth Comments at 6-7; GTE Comments at 12; MCI Comments at 2-3; USTA Comments at 7.

<sup>52</sup> See Ameritech Reply at 3-4; AT&T Reply at 5 n.6; U S WEST Comments at 4.

<sup>53</sup> See 1998 *Access Tariff Order*, 13 FCC Rcd at 14697-98, 14700, 14701-02 (describing Pacific Bell's practice of allowing a customer at a particular location to subscribe to multiple lines in separate accounts under the same name).

<sup>54</sup> See Bell Atlantic Comments at 3; Sprint Reply at 3; USTA Comments at 7; Welch Comments at § II.

<sup>55</sup> See Bell Atlantic Comments at 2-3, 6; BellSouth Comments at i-ii, 8, 11; MCI Comments at 2-3; SBC Comments at 4; USTA Comments at 6.

<sup>56</sup> See Sprint Comments at ii.

<sup>57</sup> AT&T Reply at 1-2 & n.2; GTE Reply at iii; N.Y. Telecommunications Ass'n Comments at 1-4; Sprint Comments at 1-3.

<sup>58</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 15999, 16004, 16008-11; *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9167 (1997) (Universal Service Order).

24. Nor do we find attractive GTE's suggestion that we apply in each state any state's definition of primary residential line that predates the federal definition.<sup>59</sup> Although GTE argues that doing so would avoid confusing customers who are familiar with an existing definition,<sup>60</sup> we think it just as likely that the resulting lack of uniformity would confuse customers.<sup>61</sup> Using multiple definitions would also be administratively burdensome on LECs and IXC's alike.<sup>62</sup>

### C. Definition of Single Line Business Line

#### 1. Background

25. The Commission's rules for price cap LECs state that "[a] line shall be deemed to be a single line business subscriber line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company."<sup>63</sup> The Commission defines "telephone company" for the purposes of the Part 69 Rules as "an incumbent local exchange carrier."<sup>64</sup> The Commission sought comment in the *Notice* on whether to retain the definition of "single line business line,"<sup>65</sup> and whether to consider as a single line business a business with a single line in each of multiple locations.<sup>66</sup>

#### 2. Discussion

26. We agree with the commenters that suggest we retain the existing definition of single line business line,<sup>67</sup> set out above. As the Commission observed in the *Notice*, this definition allows incumbent LECs to assess the correct SLCs and PICCs on business lines without determining whether

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<sup>59</sup> GTE Comments at 14-15.

<sup>60</sup> *Id.*

<sup>61</sup> See MCI Reply at 3-4.

<sup>62</sup> *Id.*

<sup>63</sup> 47 C.F.R. § 69.152(i). Compare 47 C.F.R. § 69.104(h) (providing identical definition for rate-of-return LECs).

<sup>64</sup> See 47 C.F.R. § 69.2(hh) (defining "Telephone Company"); *Access Charge Reform Order*, 12 FCC Rcd at 16153.

<sup>65</sup> *Notice*, 12 FCC Rcd at 13648, 13650-51.

<sup>66</sup> *Id.* at 13651.

<sup>67</sup> See Bell Atlantic Reply at 3; BellSouth Comments at 3-5; RTC Comments at 4; SBC Comments at 2 (preferring that the Commission eliminate the SLC distinction between single and multi-line business); Sprint Comments at 3; U S WEST Comments at 6.

a customer receives service from other carriers.<sup>68</sup>

27. This definition treats as a single line business any business that obtains one line from a price cap LEC<sup>69</sup> and other lines from a wireless carrier or a competitive LEC that does not resell the price cap LEC's lines.<sup>70</sup> As in the context of residential lines, we do not include lines provided by wireless carriers and competitive LECs that do not resell price cap LEC lines because such carriers are not subject to the Commission's SLC and PICC requirements, and because price-cap LECs do not collect SLCs or PICCs on those carriers' lines.<sup>71</sup>

28. As some commenters request, we clarify that if a business receives lines from a price cap LEC and a competitive LEC that is reselling the price cap LEC's lines, all those lines shall be considered multi-line business lines.<sup>72</sup> As USTA points out, clarifying that all the lines provided by a price cap LEC become multi-line business lines once a customer purchases a second line provided by that price cap LEC (whether sold by the price cap LEC or a reseller of the price cap LEC's lines) prevents businesses from avoiding the higher multi-line business charges by spreading out their lines among one price cap LEC and multiple resellers of the price cap LEC's lines.<sup>73</sup>

29. Sprint asks that we treat a business with one line in each of multiple locations as a multi-line business.<sup>74</sup> Under existing practice, a business with one line in each of multiple locations within a "telephone company area" is treated as a multi-line business.<sup>75</sup> We will continue that practice. Thus when a business subscriber's account reflects a single line in each of two locations

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<sup>68</sup> Notice, 12 FCC Rcd at 13650-51.

<sup>69</sup> The definition of single line business line that applies to rate-of-return LECs is identical to the one that applies to price cap LECs. See 47 C.F.R. § 104(h). The Commission will address any possible changes to the definition for rate-of-return LECs in a separate rulemaking proceeding. See *supra* ¶ 3. If necessary, the Commission can address the issue in the context of a tariff investigation before completion of that rulemaking proceeding.

<sup>70</sup> See Notice, 12 FCC Rcd at 13651.

<sup>71</sup> See *supra* ¶ 20.

<sup>72</sup> See Ameritech Comments at 3; AT&T Reply at 1, 5-6 (agreeing with suggestion of treating a business as a multi-line business if it subscribes to lines from both a price cap LEC and a reseller of the price cap LEC's lines, so long as doing so does not require cumbersome exchanges of information between the reseller and the incumbent); USTA Comments at 4-5.

<sup>73</sup> See USTA Comments at 4-5. Again, we intend for individual customers to look at market forces, not regulatory definitions, when deciding whether to order their lines from a single carrier or from several carriers. See *supra* ¶ 18.

<sup>74</sup> Sprint Comments at 3.

<sup>75</sup> See *MTS and WATS Market Structure Phase I*, CC Docket No. 78-72, Memorandum Opinion and Order, 1985 FCC LEXIS 2456 (Common Carrier Bureau rel. Oct. 10, 1985).

within a particular telephone company area, the subscriber will be treated as a multi-line business. Consequently, we shall maintain the existing definition of single line business line, thereby preserving the status quo both for price cap LECs and rate-of-return LECs.

#### **D. Identification of Primary Residential and Single Line Business Lines**

##### *1. Background*

30. As discussed above, the Commission tentatively concluded in the *Notice* to permit price cap LECs to use end-user self-certification to identify primary lines.<sup>76</sup> The Commission also sought comment on whether to require resellers to relay primary- and non-primary-line data to price cap LECs, or whether price cap LECs should identify the primary and non-primary lines of resellers' customers directly.<sup>77</sup> Thus, if resellers collected self-certifications, the Commission asked whether resellers should be required to provide those certifications to price cap LECs so that the price cap LECs could assess on the resellers the appropriate SLCs.<sup>78</sup> The Commission tentatively concluded that it would not use databases,<sup>79</sup> county and municipal records,<sup>80</sup> or social security numbers<sup>81</sup> to identify primary lines because such proposals are administratively burdensome and raise privacy concerns.

##### *2. Discussion*

31. The definitions of primary residential line and single line business line will enable price cap LECs to use their service records to identify the status of their lines.<sup>82</sup> This approach alleviates the concerns that the Commission expressed in the *Notice* that carrier records would be insufficient to identify line-status, as those concerns were directed primarily at a household-based

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<sup>76</sup> See *supra* ¶ 13.

<sup>77</sup> See *Notice*, 12 FCC Rcd at 13654.

<sup>78</sup> *Id.*

<sup>79</sup> See *id.* at 13655-56 (stating that the administrative burdens for a carrier or the Commission to maintain such databases might outweigh any accuracy gains they provide). Accord Ameritech Comments at 7; Bell Atlantic Comments at 4; BellSouth Comments at 9; GTE Comments at 23-24; RTC Comments at 9; U S WEST Comments at 8-9; USTA Comments at 9; Welch Comments at § IV.

<sup>80</sup> See *Notice*, 12 FCC Rcd at 13656 (stating that county and municipal records would be burdensome to use because they are dispersed throughout the country in a variety of formats and are designed for deed and tax purposes rather than for identifying primary lines). Accord Ameritech Comments at 7; U S WEST Comments at 9 n.15.

<sup>81</sup> See *Notice*, 12 FCC Rcd at 13656 & n.43 (noting that carriers do not track social security numbers, and stating that use of social security numbers would raise privacy issues). Accord Welch Comments at § IV.

<sup>82</sup> See Ameritech Comments at 4, 6, 7; U S WEST Comments at 7-8.

definition of primary residential line.<sup>83</sup> Carriers will have the necessary information in their existing service records; thus, allowing carriers to use their records is the least burdensome option for carriers, consumers, and the Commission, and minimizes privacy concerns.<sup>84</sup> Carrier records are also relatively easy to verify and reasonably immune from gaming or misreporting by customers, willful or otherwise.<sup>85</sup>

32. Consequently, we need not address various administrative and privacy issues related to the self-certification method discussed in the *Notice*.<sup>86</sup> Price cap carriers are, of course, still subject to tariffing requirements,<sup>87</sup> and the Commission can always examine carriers' line counts in a tariff investigation.<sup>88</sup> We note, also, that carriers are governed by statutory and regulatory restraints regarding the treatment of customer information to the extent that they apply to data regarding line status.<sup>89</sup>

33. We will require each price cap LEC to identify the status of the lines it provides to resellers. We are not persuaded by commenters' arguments that requiring price cap LECs to determine the status of other carriers' lines will raise administrative and confidentiality concerns.<sup>90</sup> Most of these comments focused on the difficulties of identifying lines provided by facilities-based competitive LECs, not resellers of price cap LECs' lines,<sup>91</sup> or presumed a self-certification procedure.<sup>92</sup> Bell Atlantic mentioned late in the proceeding that it cannot "readily identify" non-primary lines for carriers that resell Bell Atlantic service because it is unable at the present time to coordinate its retail

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<sup>83</sup> See *Notice*, 12 FCC Rcd at 13652-53 & n.29.

<sup>84</sup> See Bell Atlantic Reply at 4-5; BellSouth Comments at 9-10; Sprint Comments at 8-9.

<sup>85</sup> See Ameritech Comments at 5-6; AT&T Reply at 3-4; BellSouth Reply at 2-3; SBC Comments at 4, 8-9; U S WEST Comments at 4-5; USTA Comments at 8, 10.

<sup>86</sup> See *Notice*, 12 FCC Rcd at 13648, 13653-54, 13656-60.

<sup>87</sup> See 47 U.S.C. § 203.

<sup>88</sup> See 47 U.S.C. §§ 204, 205. Cf. Bell Atlantic Comments at 5.

<sup>89</sup> See, e.g., 47 U.S.C. § 222; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998).

<sup>90</sup> See BellSouth Comments at 8-9; Calif. Public Utils. Comm'n Comments at 6-7; GTE Comments at 19; MCI Comments at 5-6; USTA Comments at 9.

<sup>91</sup> See BellSouth Comments at 5; GTE Comments at 3.

<sup>92</sup> See Bell Atlantic Comments at 6-7 & n.10; Calif. Public Utils. Comm'n Comments at 6-7; GTE Comments at 19; MCI Comments at 5-6; USTA Comments at 9.

and wholesale records.<sup>93</sup> We believe, however, that the price cap LECs are in a better position going forward than the resellers to know all their lines going to a particular residence, as their service records indicate both the lines the price cap LECs bill and the lines they provide on behalf of resellers.<sup>94</sup> Thus, we do not adopt the proposal of some commenters that we require resellers to identify their primary and non-primary lines to price cap LECs.<sup>95</sup> The issues the Commission raised in the *Notice* regarding the exchange of information between price cap LECs and resellers are largely mooted by our decision to adopt a location-based definition of primary line and to allow carriers to use service records rather than self-certification to identify line status. Because of that decision, as well as our clarification of the single line business line definition, price cap LECs will have the information necessary to administer the definitions, eliminating the need to share data with, or collect data from, other carriers.

#### E. Customer Notification

34. Because the distinction between primary and non-primary residential lines may cause customer confusion, the Commission sought comment in the *Notice* on whether to require carriers to provide consumers with a uniform disclosure statement describing the distinction.<sup>96</sup> The Commission tentatively concluded that such a disclosure requirement would be consistent with applicable First Amendment standards, and sought comment on that conclusion.<sup>97</sup> The Commission also sought comment on how, if it adopts a consumer disclosure statement that refers to the SLC cap on non-primary lines, such disclosure statement should indicate any future increases in the SLC cap.<sup>98</sup> The Commission sought comment on whether such a statement would be compatible with marketing and consumer information campaigns that carriers have instituted or may be formulating.<sup>99</sup> The Commission has issued a Notice of Proposed Rulemaking in CC Docket No. 98-170 focused on truth-in-billing.<sup>100</sup> We think it more appropriate to consider these issues in connection with that docket. Consequently, we refer these issues to that proceeding.

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<sup>93</sup> See Letter from Joseph Mulieri, Director of Government Relations—FCC, Bell Atlantic, to Jane Jackson, Chief, Competitive Pricing Division, FCC (Jan. 20, 1999).

<sup>94</sup> See Ameritech Comments at 7; U S WEST Comments at 8.

<sup>95</sup> See Bell Atlantic Comments at 7 n.10; GTE Comments at 19-20; MCI Comments at 4-6; RTC Comments at 9; SBC Comments at 5-6; Sprint Comments at iii; USTA Comments at 9.

<sup>96</sup> *Notice*, 12 FCC Rcd at 13660.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Truth-in-Billing*, CC Docket No. 98-170, Notice of Proposed Rulemaking, FCC 98-232 (rel. Sept. 17, 1998).

## F. Detailed PICC Billing of IXC's

35. AT&T, MCI, and Sprint have asked the Commission to require price cap LECs to issue detailed bills that enable interexchange carriers to audit the PICC charges that price cap LECs assess on them.<sup>101</sup> Creating additional requirements is not necessary at this time. We already require price cap LECs to provide interexchange carriers with customer-specific information about the PICCs they assess on them,<sup>102</sup> and to include a "class of customer" indicator on Customer Account Record Exchange (CARE) transactions for new customer notifications.<sup>103</sup> Furthermore, our decisions in this order concerning the definition and identification of primary residential lines and single line business lines should facilitate clearer and more uniform billing of SLCs and PICCs.

## G. Procedural Matters

### 1. Final Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act (RFA),<sup>104</sup> the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Notice* in this docket.<sup>105</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the *IRFA*. The RFA also requires the Commission to prepare a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact this order might have on small entities, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>106</sup>

37. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>107</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its

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<sup>101</sup> AT&T Reply at 4 n.5; MCI Comments at 9-10; Sprint Comments at 9-10.

<sup>102</sup> See *Access Charge Reform*, Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606, 16610 (1997).

<sup>103</sup> See *MCI Emergency Petition for Prescription*, Memorandum Opinion and Order, 13 FCC Rcd 11127, 11127 (Common Carrier Bur. 1998).

<sup>104</sup> See 5 U.S.C. § 603. The Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA), amended the RFA. Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>105</sup> See *Notice*, 12 FCC Rcd at 13661-66.

<sup>106</sup> 5 U.S.C. § 605(b).

<sup>107</sup> 5 U.S.C. § 601(6).



activities.<sup>108</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>109</sup> The SBA has further defined a small business for SIC categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) as a business with no more than 1,500 employees.<sup>110</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>111</sup> "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>112</sup>

38. Only price cap LECs currently assess SLCs and PICCs, and this order places the responsibility for differentiating and identifying primary residential lines and single line business lines only on price cap LECs, as discussed above. Consequently, this order will not significantly affect "small organizations" or "small governmental jurisdictions," and we only address the impact on small price cap LECs. Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to price-cap LECs. The closest definition under SBA rules is that for establishments providing "Telephone Communications, Except Radiotelephone."

39. According to our most recent data, 1,371 carriers reported that they were engaged in the provision of local exchange services.<sup>113</sup> Fewer than 20 of these carriers are price-cap incumbent LECs. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of "small entity."<sup>114</sup> We consider these carriers dominant in their field of operations. Some also are not independently owned and operated, and most if not all likely have more than 1,500 employees. We therefore certify that this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this order, including this certification, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>115</sup> A summary of this *Report and Order* and this

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<sup>108</sup> 5 U.S.C. § 601(3).

<sup>109</sup> Small Business Act, 15 U.S.C. § 632.

<sup>110</sup> 13 C.F.R. § 121.201.

<sup>111</sup> 5 U.S.C. § 601(4).

<sup>112</sup> 5 U.S.C. § 601(5).

<sup>113</sup> FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (Telecommunications Industry Revenue).

<sup>114</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144-45, 16150 (1996).

<sup>115</sup> See 5 U.S.C. § 801 (a)(1)(A).

certification will also be published in the Federal Register,<sup>116</sup> and will be sent to the Chief Counsel for Advocacy of the SBA.

## 2. *Final Paperwork Reduction Act Analysis*

40. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and does not contain new and/or modified information collections subject to OMB review.

### III. Further Notice of Proposed Rulemaking

#### A. Discussion

41. In establishing different SLCs and PICCs for primary and non-primary residential lines, we cited the important universal service goal of subsidizing rates for at least one line so that consumers have access to the telephone network.<sup>117</sup> Since the Notice on the definition of primary line, however, it has come to our attention that when one or more members of a residence have hearing or speech disabilities, the members of the residence often subscribe to one line dedicated for a traditional telephone and one line for a text telephone (TTY).<sup>118</sup> The residents can use the TTY to communicate directly with other TTYs, or can use the TTY in conjunction with Telecommunications Relay Services (TRS)<sup>119</sup> and "two-line" voice or hearing carryover.<sup>120</sup> Thus, for example, in residences where one family member has a hearing or speech disability, two lines may be necessary for all the residents to have access to telephone service.

42. We believe that it is important to ensure that consumers with hearing or speech

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<sup>116</sup> See 5 U.S.C. § 604(b).

<sup>117</sup> See, e.g., *Access Reform Order*, at 15999-13.

<sup>118</sup> A TTY uses graphic communication in the transmission of coded signals through a wire or radio communication system. 47 C.F.R. § 64.601(8).

<sup>119</sup> Telecommunications Relay Services (TRS) are telephone transmission services that enable an individual who has a hearing or speech disability to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the way an individual who does not have a hearing or speech disability communicates using voice telephone services by wire or radio. 47 C.F.R. § 64.601(7). The Commission's rules for TRS are codified at 47 C.F.R. §§ 64.601 - 64.605.

<sup>120</sup> Voice carryover (VCO) is a form of TRS that allows users with hearing disabilities to speak directly to a hearing person, while the TRS communication assistant (CA) types what is said to the TTY user. Hearing carryover (HCO) is a form of TRS that allows persons with speech disabilities to listen to the person they are calling, while typing their statements for the CA to read aloud to the voice telephone user. See 47 C.F.R. § 64.601(6), (9). "Two line" VCO and HCO are versions of these services that use two telephone lines and conference calling functions to increase the transparency of the CA and improve the functional equivalency of these services.

disabilities have access to the telephone network at primary-line rates, but we lack a detailed record in the present proceeding to determine how to address this issue. We tentatively conclude in this Further Notice of Proposed Rulemaking that individuals with speech or hearing disabilities served by price cap LEC lines should have access to the telecommunications network at primary line rates. Moreover, if we extend the non-primary line rate structure to rate-of-return LECs, as we proposed in the rate-of-return access reform notice,<sup>121</sup> we tentatively conclude that individuals with hearing or speech disabilities served by rate-of-return LEC lines should receive similar treatment. We seek comment on these tentative conclusions. In addition, we seek comment on other technologies or services that require an additional line to permit consumers with disabilities to access the telephone network and on whether those additional lines should also receive primary line rates. We believe that our tentative conclusions above are consistent with the Commission's mandate to ensure that all Americans have access to telecommunications services,<sup>122</sup> and with the policy goals underlying the Commission's decision to cap primary residential SLCs and PICCs at lower levels than are applicable to other lines.

43. One way to ensure that consumers with hearing or speech disabilities have access to the telephone network at primary-line rates would be to treat as primary one residential line per location that is used by such individuals in conjunction with a TTY, regardless of whether another line at the location is also treated as primary for residents without such disabilities. We seek comment on such an approach, and how it might be implemented.

44. Another approach would be to subsidize more explicitly the difference in charges that would apply when the TTY-dedicated line is deemed non-primary as opposed to primary. We seek comment on such an approach, and how it might be implemented. In particular, we seek comment on whether the subsidies for such an approach should come from the TRS Fund or the more general Universal Service Fund. We also seek comment on the implications of section 225(d)(1)(D), which "require[s] that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination."<sup>123</sup>

45. In many cases, the only change necessary to make a telephone line more easily accessible to an individual with a disability is to add a piece of consumer premises equipment (CPE), such as a TTY. Consequently, carriers may have no readily apparent means of determining which lines are being used by individuals with disabilities. We seek comment on whether carrier records indicate the presence at a location of certain CPE such as TTYs. We also seek comment on whether self-certification would be an appropriate means for carriers to identify the relatively small universe of

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<sup>121</sup> See *Access Charge Reform for Incumbent LECs Subject to Rate-of-Return Regulation*, Notice of Proposed Rulemaking, 13 FCC Rcd 14238, 14251-53 (1998).

<sup>122</sup> See 47 U.S.C. § 151 (creating the Federal Communication Commission "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States ... Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges").

<sup>123</sup> 47 U.S.C. § 225(d)(1)(D).

customers to which either the definitional or funding approaches would apply, and if so, how such self-certification could be implemented. We note that many IXC's offer qualified TTY users the opportunity to self-certify to receive toll discounts, in recognition of the longer calling times associated with TTY use. For the sake of a clear record and so that all parties understand the issues involved, we also ask commenters to describe the developments in technology and services associated with TTYs, TRS, and "two-line" voice or hearing carryover. Parties should also address the extent to which any of these proposals would affect small business entities, including new entrants.

## B. Procedural Matters

### 1. *Ex Parte*

46. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's revised *ex parte* rules, which became effective June 2, 1997.<sup>124</sup> Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b), as well.

### 2. *Initial Regulatory Flexibility Act Analysis*

47. As required by the RFA, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities<sup>125</sup> by the policies and rules proposed in this *Further Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *Further Notice*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>126</sup> In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>127</sup>

48. Need for and Objectives of the Proposed Rules: In the *Access Reform Order*, the Commission set lower SLC and PICC caps for primary residential lines and single line business lines than for non-primary residential lines and multi-line business lines. The *Report and Order* in this

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<sup>124</sup> See Amendment of 47 C.F.R. § 1.1200 et seq. Concerning *Ex Parte* Presentations in Commission Proceedings, GC Docket No. 95-21, Report and Order, 12 FCC Rcd 7348, 7356-57 (citing 47 C.F.R. § 1.1204(b)(1)).

<sup>125</sup> For discussion of the meaning of "small entity," see *supra* paragraph 37.

<sup>126</sup> See 5 U.S.C. § 603(a).

<sup>127</sup> See *id.*

proceeding promulgates definitions of “primary residential line” and “single line business line” to promote uniformity in the way price cap LECs assess SLCs and PICCs. The *Further Notice* seeks comment on how to apply the primary line distinction to TTY lines used by individuals with speech or hearing disabilities.

49. Legal Basis: The proposed action is authorized by sections 1, 2, 4(i), 4(j), 201-205, 218-220, 225, and 254 of the Communications Act as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 218-220, 225, and 254.

50. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply: The RFA directs agencies to provide, where feasible, a description of the type and number of small entities that our proposed rules may affect.<sup>128</sup> The proposals set forth in this proceeding may have a significant economic impact on a substantial number of small entities identified by the SBA. Because one of the proposals is to use a funding mechanism, such as the Universal Service Fund, we provide estimates of the number of small entities potentially affected across many sectors of the telecommunications industry. A definitional approach, on the other hand, would affect only price cap LECs. Consequently, the rules we eventually adopt may affect significantly fewer small entities than we describe here.

51. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).<sup>129</sup> According to data in the most recent report, there are 3,459 interstate carriers.<sup>130</sup> Below, we further describe and estimate the number of small entities that may be affected by the proposed rules, if adopted. We ask parties to comment on the number of small carriers that they believe will be affected by rules regarding the primary-line treatment of TTY lines used by individuals with speech or hearing disabilities. Wherever possible, commenters should break their estimates into categories and subcategories similar to those we discuss here.

52. *Telephone Companies (SIC 4813).* We shall continue to exclude small incumbent LECs from the definitions of “small entity” and “small business concern,”<sup>131</sup> but nonetheless consider the impact on small incumbent LECs in our IRFA. Accordingly, our use of the terms “small entities” and “small businesses” does not encompass “small incumbent LECs.” We use the term “small incumbent LECs” to refer to any incumbent LECs that arguably might be defined by SBA as “small business concerns.”

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<sup>128</sup> 5 U.S.C. § 603(b)(3).

<sup>129</sup> Telecommunications Industry Revenue, Figure 2.

<sup>130</sup> *Id.*

<sup>131</sup> For discussion of our reasons for excluding small incumbent LECs, see *supra* paragraph 39.

53. *Total Number of Telephone Companies Affected.* The proposals herein may have a significant effect on a substantial number of the small entity telephone companies identified by SBA. The U.S. Bureau of the Census reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services for at least one year.<sup>132</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Although it seems certain that some of the 3,497 telephone service firms are not "independently owned and operated," are dominant in their field, or have more than 1,500 employees, we will assume for present purposes that they qualify as small entities or small incumbent LECs. Thus, we estimate that the rules we eventually adopt following this *Further Notice* will affect no more than 3,497 small entity telephone companies and small incumbent LECs.

54. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that 2,321 such telephone companies were in operation for at least one year at the end of 1992.<sup>133</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Because we lack more specific data, we will assume for present purposes that the 26 companies have fewer than 1,500 employees. Although it seems certain that some of the 2,321 carriers are not independently owned and operated, or are dominant in their field, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that the rules we eventually adopt will affect no more than 2,321 small entity wireline companies and small incumbent LECs.

55. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small LEC. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to our most recent data, 1,371 carriers reported that they were engaged in the provision of local exchange services.<sup>134</sup> Although it seems certain that some of these carriers are not independently owned and operated, are dominant in their field, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following this *Further Notice* will affect no more than 1,371 small entity LECs and small incumbent LECs.

56. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small IXC. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent

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<sup>132</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>133</sup> *Id.*, at Firm Size 1-123.

<sup>134</sup> *Telecommunications Industry Revenue*, Figure 2.

*Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.<sup>135</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following this *Further Notice* will affect no more than 143 small entity IXC's.

57. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.<sup>136</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following this *Further Notice* will affect no more than 109 small entity CAPs.

58. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services.<sup>137</sup> Although some of these companies may not be independently owned and operated, or may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following this *Further Notice* will affect no more than 27 small entity operator service providers.

59. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>138</sup> According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services.<sup>139</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have

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<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> 13 C.F.R. § 121.201, SIC code 4813.

<sup>139</sup> *Telecommunications Industry Revenue*, Figure 2.

more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

60. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.<sup>140</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

61. *Radiotelephone (Wireless) Carriers.* The Census Bureau reports that there were 1,178 companies in operation for at least one year at the end of 1992 that meet the SBA's definition of radiotelephone company.<sup>141</sup> The Census Bureau also reported that all but 12 of those radiotelephone companies had fewer than 1,000 employees. Because we lack more specific data, we will assume for present purposes that the remaining 12 companies have fewer than 1,500 employees. Although it seems certain that some of the wireless carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that the rules we eventually adopt following this *Further Notice* will affect no more than 1,178 small entity radiotelephone companies.

62. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies, discussed above. We note that there are 1,758 cellular licenses, although a cellular licensee may own several licenses. According to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.<sup>142</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

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<sup>140</sup> *Id.*

<sup>141</sup> 1992 Census, at Firm Size 1-123.

<sup>142</sup> *Telecommunications Industry Revenue*, Figure 2.



63. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities applicable to mobile service carriers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. The most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.<sup>143</sup> Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

64. *Paging Services.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the paging service. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The SBA has approved this definition for paging companies. The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area (EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that no reliable estimate of the number of paging licensees can be made, we assume, for purposes of this IRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

65. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>144</sup> For Block F, the Commission added a classification for "very small business," which the Commission defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>145</sup> The SBA has approved these regulations defining "small entity" in the context of broadband PCS auctions.<sup>146</sup> We do not have sufficient data to determine how many small entities under the SBA-approved definition bid successfully for licenses in Blocks A and B. As of now there are 90

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<sup>143</sup> *Id.*

<sup>144</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (June 24, 1996) (PCS and CMRS Report and Order), 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

<sup>145</sup> *PCS and CMRS Report and Order*, at para. 60.

<sup>146</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

non-defaulting winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders qualify as small entities for Blocks D, E, and F. Based on this information, we conclude that the rules we eventually adopt following this *Further Notice* will affect no more than 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

66. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

67. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>147</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>148</sup> We will use the SBA's definition applicable to radiotelephone companies. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

68. *Specialized Mobile Radio.* Pursuant to Section 90.814(b)(1) of the Commission's Rules,<sup>149</sup> the Commission has defined "small entity" for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of no more than \$15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.<sup>150</sup> We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues of no more than \$15 million. The Commission recently held auctions for geographic area licenses in the

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<sup>147</sup> The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

<sup>148</sup> BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757, 22.759.

<sup>149</sup> 47 C.F.R. § 90.814(b)(1).

<sup>150</sup> See *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the rules we eventually adopt following this *Further Notice* will affect no more than 60 small entity geographic area SMR licensees. A total of 525 licenses were auctioned for the upper 200 channels in the 800 MHz geographic area SMR auction. There were 62 qualifying bidders, of which 52 were small businesses. The Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these lower channel licenses. We assume that, for purposes of our evaluations in this IRFA, all of the current specialized mobile radio licensees are small entities, as that term is defined by the SBA.

69. *220 MHz Service.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>151</sup> Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

70. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>152</sup> We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>153</sup> The SBA has approved these definitions.<sup>154</sup> An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>155</sup> 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693

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<sup>151</sup> 1992 Census, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

<sup>152</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997).

<sup>153</sup> *Id.* at 11068-69, para. 291.

<sup>154</sup> See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

<sup>155</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.<sup>156</sup> A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

71. *Mobile Satellite Services (MSS)*. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is one with \$11.0 million or less in annual receipts.<sup>157</sup> According to the Census Bureau, there were a total of 848 communications services, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.<sup>158</sup> Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under Section 20.7(c) of the Commission's Rules<sup>159</sup> as mobile services within the meaning of Sections 3(27) and 332 of the Communications Act.<sup>160</sup> Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of Section 332. Facilities provided through a transportable platform that cannot move when the communications service is offered are excluded from Section 20.7(c).<sup>161</sup> The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees.

72. *Air-Ground Radiotelephone Service*. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's rules.<sup>162</sup> Accordingly, we will use the SBA's definition applicable to radiotelephone companies. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

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<sup>156</sup> Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

<sup>157</sup> 13 C.F.R. § 120.121, SIC Code 4899.

<sup>158</sup> 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

<sup>159</sup> 47 C.F.R. § 20.7(c).

<sup>160</sup> 47 U.S.C. §§ 153(27), 332.

<sup>161</sup> 47 C.F.R. § 20.7(c).

<sup>162</sup> 47 C.F.R. § 22.99.

73. *Fixed Microwave Services.* Microwave services include common carrier,<sup>163</sup> private-operational fixed,<sup>164</sup> and broadcast auxiliary radio services.<sup>165</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone companies. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies, and may be affected by the rules we eventually adopt to the extent that they contribute to the Universal Service or TRS funds.

74. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

75. *Cable System Operators (SIC 4841).* The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating less than \$11 million in revenue annually.<sup>166</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue.<sup>167</sup> We note that cable system operators are included in our analysis due to their ability to provide telephony.

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<sup>163</sup> 47 U.S.C. § 201-276.

<sup>164</sup> Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>165</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>166</sup> 13 C.F.R. § 121.201, SIC 4841.

<sup>167</sup> U.S. Department of Commerce, Bureau of Census, 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

76. The Commission has developed with the SBA's approval our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.<sup>168</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.<sup>169</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this Order. We conclude that only a small percentage of these entities currently provide qualifying "telecommunications services" required by the Act and, therefore, estimate that the number of such entities affected are significantly fewer than noted.

77. The Act also contains a definition of small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>170</sup> The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>171</sup> Based on available data, we find that the number of cable operators serving 617,000 subscribers or fewer total 1,450.<sup>172</sup> We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,<sup>173</sup> and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Act.

78. *Direct Broadcast Satellites (DBS)*. Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). As of December 1996, there were eight DBS licensees. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that

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<sup>168</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393.

<sup>169</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>170</sup> 47 U.S.C. § 543(m)(2).

<sup>171</sup> 47 C.F.R. § 76.1403(b).

<sup>172</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>173</sup> We receive such information on a case-by-case basis only if a cable operator appeals to a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 C.F.R. § 76.1403(d).

could be impacted by these rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

79. *International Services.* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11 million or less in annual receipts.<sup>174</sup> According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than \$9,999 million.<sup>175</sup> We note that those entities providing only international service will not be affected by our rules. We do not, however, have sufficient data to estimate with greater detail those providing both international and interstate services. Consequently, we estimate that there are fewer than 775 small international service entities potentially impacted by our rules.

80. *International Broadcast Stations.* Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. We note that those entities providing only international service will not be affected by our rules. We do not, however, have sufficient data to estimate with greater detail those providing both international and interstate services. Consequently, we estimate that there are fewer than 20 international broadcast stations potentially impacted by our rules.

81. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements: Once we adopt rules regarding the primary-line treatment of TTY lines used by individuals with speech or hearing disabilities, carriers will need to identify such individuals. To do so, carriers may be able to rely on existing mechanisms, such as the toll discount program. If carriers are unable to use existing mechanisms, they may need to implement a self-certification mechanism. If the Commission adopts a funding approach, carriers may also need to report revenues for the administration of the funding mechanism. Carriers may, however, already be providing some of the necessary information in conjunction with existing funding mechanisms, such as the one currently in place for TRS. Under the funding approach, carriers may also need to provide data on the revenues attributable to TTY lines used by speech or hearing-impaired individuals as primary lines and as non-primary lines. We ask parties to comment on the reporting, recordkeeping, and other compliance requirements they believe will be necessary to implement rules regarding the primary-line treatment of TTY lines used by individuals with speech or hearing disabilities.

82. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: We have outlined and sought comment on what we believe are

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<sup>174</sup> 13 C.F.R. § 120.121, SIC 4899.

<sup>175</sup> United States Dept. of Commerce, Bureau of Census, *1992 Economic Census Industry and Enterprise Receipts Size Report*, at Tbl. 2D.

the significant possible alternatives for implementing a primary-line definition with respect to TTY lines used by speech- or hearing-disabled individuals. We note that small entities will be largely unaffected by the rules we promulgate following this *Further Notice* because the distinction between primary and non-primary lines applies only to price cap LECs. Depending on the funding mechanism—if any—chosen, however, some small entities may have contribution requirements. We seek comment on any significant alternative compliance or reporting requirements or timetables that take into account the resources available to small entities and accomplish our stated objectives.

83. Federal Rules that May Overlap, Duplicate, or Conflict with the Proposed Rules.

Because this is the first occasion in which the Commission has attempted to define primary lines, we do not believe the proposals in this *Further Notice* overlap with or duplicate any existing federal rules. We ask parties to comment on any federal rules that they believe may overlap with, duplicate, or conflict with the approaches we discuss in this *Further Notice*.

3. *Initial Paperwork Reduction Act Analysis*

84. Certain proposals contained in this *Further Notice* may require an information collection. As part of our continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, we invite the general public and the OMB to take this opportunity to comment on those information collections.<sup>176</sup> Public and agency comments are due at the same time as other comments on this *Further Notice*; OMB comments are due 60 days from date of publication of this *Further Notice* in the Federal Register. Comments should address: (a) whether the proposed information collections are necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

4. *Notice and Comment Procedures*

85. Pursuant to sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before April 9, 1999, and reply comments on or before April 26, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>177</sup>

86. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however,

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<sup>176</sup> A supporting statement, prepared in accordance with the Paperwork Reduction Act, that details the Commission's estimates with respect to the burdens imposed by the proposals in this FNPRM is available from the Commission or from the Office of Management and Budget.

<sup>177</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).



commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

87. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street S.W., Room TW-A325, Washington, D.C. 20554. In addition, one copy of each pleading must be filed with the Commission's duplicating contractor, International Transcription Services (ITS), 1231 Twentieth Street, N.W., Washington, D.C. 20036, and one copy with the Chief, Competitive Pricing Division, 445 Twelfth St. S.W., Fifth Floor, Washington, D.C. 20554.

88. Parties are also asked to submit comments and reply comments on diskette. Such diskette submission would be in addition to and not a substitute for the formal filing requirements addressed above. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS Dos 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

89. Written comments by the public on the proposed and/or modified information collections are due April 9, 1999, and replies on or before April 26, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth St. S.W., Washington, DC 20554, Room 1-C804, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 Seventeenth Street N.W., Washington, D.C. 20503, or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

90. Alternative formats (computer diskette, large print, audio cassette and Braille) of this Report and Order and Further Notice of Proposed Rulemaking are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 voice, (202) 418-2555 TTY, or [mcontee@fcc.gov](mailto:mcontee@fcc.gov). The Notice can also be downloaded at: <http://www.fcc.gov/dtf/>.

#### IV. Ordering Clauses

91. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and (j), 201-209, 218-222, 251, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 218-222, 251, 254, and 403, that this order IS ADOPTED.

92. IT IS FURTHER ORDERED that section 69.152 of the Commission's rules, 47 C.F.R.

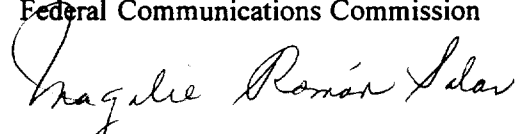
§ 69.152, IS AMENDED as set forth in Appendix B.

93. IT IS FURTHER ORDERED that the policies, rules, and requirements adopted herein SHALL BE EFFECTIVE July 1, 1999.

94. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 218-220, 225, and 254 of the Communications Act as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 218-220, 225, and 254, a Further Notice of Proposed Rulemaking IS HEREBY ADOPTED.

95. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, References Operations Division, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Certification and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission



Magalie Roman Salas  
Secretary

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**Appendix A: List of Parties****Commenters**

1. Ameritech
2. Bell Atlantic Telephone Companies (Bell Atlantic)
3. BellSouth Corporation (BellSouth)
4. California, People of the State of, and the Public Utilities Commission of the State of California (Calif. Public Utils. Comm'n)
5. Cox Communications Inc. (Cox)
6. GTE Service Corporation (GTE)
7. MCI Telecommunications Corporation (MCI)
8. New York State Telecommunications Association (N.Y. Telecom. Ass'n)
9. Rural Telephone Coalition (RTC)
10. Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (SBC)
11. Sprint Corporation (Sprint)
12. U S WEST Inc. (U S WEST)
13. United States Telephone Association (USTA)
14. Welch, Lyman C. (Welch)

**Reply Commenters**

1. Ameritech
2. AT&T Corporation (AT&T)
3. Bell Atlantic
4. BellSouth
5. Cox
6. GTE
7. MCI
8. RTC
9. SBC
10. Sprint
11. U S WEST
12. USTA

**Appendix B: Final Rules****Amendments to the Code of Federal Regulations****Part 69—Access Charges**

1. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Section 69.152 is amended by adding paragraph (h) to read as follows:

**§ 69.152 End user common line for price cap local exchange carriers.**

\* \* \* \* \*

(h) Only one of the residential subscriber lines a price cap LEC provides to a location shall be deemed to be a primary residential line.

(1) For purposes of section 69.152(h), "residential subscriber line" includes residential lines that a price cap LEC provides to a competitive LEC that resells the line and on which the price cap LEC may assess access charges.

(2) If a customer subscribes to residential lines from a price cap LEC and at least one reseller of the price cap LEC's lines, the line sold by the price cap LEC shall be the primary line, except that if a resold price cap LEC line is already the primary line, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence.

March 8, 1999

**STATEMENT OF COMMISSIONER  
HAROLD FURCHTGOTT-ROTH DISSENTING IN PART**

*Re: Report and Order & Further Notice of Proposed Rulemaking Defining Primary Lines,  
CC Docket 97-181.*

I dissent in part from today's decision because of my concerns regarding the practicality of continuing to differentiate between primary and secondary residential lines. Although responsible for the Presubscribed Interexchange Carrier Charge (PICC), interexchange carriers frequently do not have the information necessary to determine what is a primary and what is a secondary residential line. While today's Order begins to address this issue, I would have preferred to eliminate the distinction, charging all residential lines one flat fee. I fear that the administrative costs of continuing this distinction outweigh any benefits from charging higher fees for second lines. Indeed, I note that the actual cost of an additional residential line is likely to be less -- not more -- than the cost of an initial one. Thus, I would have eliminated the non-primary lines category for both subscriber line charges (SLCs) and PICCs, leaving a single cap for all residential lines.